

***Means-Plus-Function Language***

The following is a quotation of 35 U.S.C. 112, sixth paragraph:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

**Claims 19-20, 26, and 30-34 recite the language “means for” but do not invoke 35 U.S.C 112, sixth paragraph as they recite structure, material, or acts in support thereof which modify the phrase “means for.” See MPEP § 2181(I).**

Claim 19 recites, “...content distributor means for identifying...pricing means for identifying a price...presentment means for presenting an offer...acceptance means for receiving acceptance...activating means for activating said programming service.” The elements of the system all recite structure for achieving the specified function and thus 35 U.S.C. 112, sixth paragraph will not apply until such language is deleted from the claim limitation.

Claims 20, 26, and 30-34 are analyzed with respect to claim 19.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 4-7, 9-10, 12-17, 19, 22-25, 27, 29-35, and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis '102 et al. (Pub. No.: US 2004/0117831, hereinafter Ellis '102).**

Claim 1 recites a method for, "electronically ordering and activating a user content subscription comprising the steps of: (a) identifying at least one content distributor available to a user; (b) identifying a price to the user for a programming service from the at least one content distributor; (c) presenting an offer for said programming service to the user for said price; (d) receiving an acceptance of said offer for said programming service for said price; and (e) activating said programming service." Ellis '102 teaches:

[a] system for providing interactive television program guide features and other features...related to a specific user interest or programming category in niche hubs...For example...programming features such as television program listings for movies, video-on-demand listings for movies, pay-per-view listings for movies...movie channel package ordering, etc. [ABST]

Fig. 14 of Ellis '102 teaches a menu which presents a user with various programming choices 221 such as PPV Movie Club, HBO Upgrade, etc, as well as advertisements for various services and products and allows the user to purchase a product or programming option through the interactive guide, this is the equivalent of "presenting an offer for said programming service" as recited in step (c). As to steps (b), (d), and (e), Ellis teaches,

Selecting a specific offer may display a screen similar to the Program Information screen with details on the offer, such as price and description, and the option to purchase the offer. When the user purchases one of the special offers, this information along with the user's account information may be transmitted to the television distribution for processing so that the user can access the purchased channels, programs, etc., and the user's account may be debited. [0140]

As to step (a) of the claimed system, the system taught by Ellis '102 must receive the program guide data from at least the user's current content provider.

Claim 19 is rejected by Ellis '102 et al. as applied to claim 1.

Claim 36 is rejected by Ellis '102 as applied to claim 1. Ellis '102 teaches that a set top box displays the program guide information and facilitates the transaction between the user and the cable distributor.

Claim 4 recites the method of claim 1, "wherein said offer comprises: a programming service price; and a promotional offer." The program guide Ellis '102 presents the user with various offers for available programming options including,

...special offers...that may be available from the system provider. These offers may include a special deal on a VOD movie, buy one get one free offers, movie clubs allowing the user to get discounts on purchases of multiple movies, upgrades of single or multiple movie channels, etc. Selecting a specific offer may display a screen similar to the Program Information screen with details on the offer, such as price and description, and the option to purchase the offer. [0140]

The "special offers" taught by Ellis are the equivalent of a "promotional offer," as recited in claim 4.

Claim 22 is rejected by Ellis '102 et al. as applied to claim 4.

Claim 5 recites the method of claim 4, "wherein said programming service price comprises at least one of: a user-tailored programming service price; a tiered user service level price; a user demographically-tailored programming service price; and a user psychographically-tailored programming service price." Fig. 14 of Ellis '102 teaches that the user may be offered a choice of programming packages including a "Silver Package" or a "Gold Package." This is the equivalent of a "tiered service level" as claimed.

Claim 23 is rejected by Ellis '102 as applied to claim 5.

Claim 6 is rejected by Ellis '102 as applied to claim 4.

Claim 22 is rejected by Ellis '102 as applied to claim 6.

Claim 7 is rejected by Ellis '102 as applied to claim 4.

Claim 23 is rejected by Ellis '102 as applied to claim 7.

Claim 9 recites the method according to claim 1, "wherein the at least one content distributor comprises at least one of: a cable television (CATV) content distributor; a satellite content distributor; a wired content distributor; a wireless content distributor; an Internet content distributor; and a multi-channel video program distributor (MVPD)." Fig. 1A-D and 47 of Ellis '102 teach a system in which the content and program guide data is distributed through a television network.

Claim 27 is rejected by Ellis '102 as applied to claim 9.

Claim 10 is rejected by Ellis '102 as applied to claim 9.

Claim 12 is rejected by Ellis '102 as applied to claims 4, 6-7.

Claim 29 is rejected by Ellis '102 as applied to claim 12.

Claim 13 is rejected by Ellis '102 as applied to claims 1, 19, and 36.

Claim 30 is rejected by Ellis '102 as applied to claim 13.

Claim 14 is rejected by Ellis '102 as applied to claims 1, 19, and 36.

Claim 31 is rejected by Ellis '102 as applied to claim 14.

Claim 15 recites the method of claim 1, "wherein said step (d) comprises at least one of: (1) receiving said acceptance via at least one of: a set-top box, a television (TV), a browser, a digital video recorder (DVR), a computer, a personal digital assistant

(PDA), a wireless device, a communications device, a phone, and an Internet browser."

Fig. 1A of Ellis '102 teaches a system in which a television system is received through a set top box.

Claim 32 is rejected by Ellis '102 as applied to claim 15.

Claim 16 is rejected by Fig. 1A-D of Ellis '102.

Claim 33 is rejected by Ellis '102 as applied to claim 16.

Claim 17 is rejected by Fig. 1A-D of Ellis '102.

Claim 34 is rejected by Ellis '102 as applied to claim 17.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-3 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis '102 as applied to claims 1 and 19 above, and further in view of Kubler et al. (Pub. No.: US 2004/0158865).** Claim 2 recites the method of claim 1, "wherein said (e) comprises: (1) determining whether activation fails; and (2) forwarding said acceptance of said offer for said programming service to the at least one content distributor, if said activation fails." As applied above, Ellis '102 teaches the method of claim 1, but does not explicitly teach a method for detecting a communication failure and attempting to connect if said communication fails. Fig. 22 of Kubler teaches

a method that recognizes if an attempt to log onto a host fails and performs subsequent attempts to log on to said host. It would have been obvious at the time the invention was made to apply Kubler error detection to the system taught by Ellis '102 to ensure completion of a user's purchase, should the initial communication fail. Such functionality would clearly be desirable so as to ensure a customer satisfaction and confidence in the system.

Claim 3 recites the method of claim 2, "wherein said activation fails when at least one of: communication fails with the at least one content distributor; communication with a device of the user fails; and activation is denied." This is inherent in the detection of a failed communication as applied to claim 2.

Claim 20 is rejected by Kubler et al. as applied to claim 2.

Claim 21 is rejected by Kubler et al. as applied to claim 3.

**Claims 18 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis '102 as applied to claims 1 and 19 above, and further in view of Ellis et al. (Pub. No.: US 2002/0174430, hereinafter Ellis '128).** Claim 18 recites the method of claim 1, "further comprising, prior to said (a): (f) transmitting an electronic postcard from a sending user to a receiving user wherein said postcard comprises information about programming service content, and wherein said postcard comprises a link to the method for electronically ordering and activating the user content subscription." Fig. 45-46 of Ellis '102 teach a method that allows a user to send a message to another user via the program guide application; however, Ellis '102 does not explicitly teach that the

user can send a message containing a link which would cause the recipient's set-top box to perform a specific function (e.g. tuning to a channel, ordering a PPV movie, etc.).

Fig. 123-126 of Ellis '128 teach an interactive program guide including a feature that allows a user to send, "a recording, a reminder, or a recording request to another user" [0469]. Furthermore, Ellis '128 teaches that upon receipt of said message, the user will be presented with a display which will allow the user to take certain actions pertaining to the content of said message.

Fig. 126 shows overlay 9470 that may be displayed to inform a current user of a reminder or recording request that has been sent to the current user. Overlay 9470 may include related options 9472 that may allow a user to take particular actions in connection with the reminder or recording request. Related options may allow a user to select or to record or tune a program that is the object of overlay 9470. If desired, the interactive television application may automatically process the content of the message...On receiving a record request, the interactive television application may automatically schedule a local recording for the program. [0470]

As shown above, Ellis '128 teaches a method for a user to send a message, the content of which can instruct a recipient's set-top box to perform a function such as tuning to a specific channel or scheduling a recording of a program without the recipient manually performing said function. It would have been obvious to one of ordinary skill in the art at the time of the invention to extend the functionality of the messaging system to include an option wherein the recipient's set-top box can engage the ordering menu so that the recipient of a message or recommendation can order a movie or subscription service. This would provide an opportunity to increase PPV/VOD revenue generated by the system of Ellis '102 as users would be likely to purchase a program or service package recommended by a friend if they were presented with the opportunity to immediately order said programming upon receipt of said recommendation.

Claim 35 is rejected by Ellis '128 as applied to claim 18.

**Claims 8, 11, 26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis '102 as applied to claims 1 and 19 above, and further in view of Kolawa et al (US Pat. No.: 6,370,513).** Claim 8 recites the method of claim 1, "wherein said step (a) comprises: (1) receiving an indication of a location of the user; and (2) querying a database that maps the at least one content distributor to said indication of said location of the user." As analyzed above, Ellis '102 teaches the method of claim 1, but does not teach providing a list of content providers based on a user's location. Kolawa teaches a system that recommends restaurants to a user based on the user's preferences and location. "The user also provides other identification information, such as user name, address, and telephone number...the system recommends a restaurant along with dishes that cater to the user's tastes. In doing so, the system access a restaurant database including a list of restaurants in the user's geographical area" (Col. 17-19). A database of content distributors including a list of distributors is an obvious variant of the restaurant database taught by Kolawa. Ellis '102 teaches that when a user purchases a program or service, "the user's account information may be transmitted to the television distribution for processing...and the user's account may be debited" [0140], thus the system must have access to a user's account information. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the system taught by Kolawa to search a database of content distributors and return a list of distributors based on the user's location.

Claim 26 is rejected by Kolawa et al. as applied to claim 8.

Claim 11 recites the method of claim 8, " wherein said indication of said location of the user comprises at least one of: a zip code; a phone number; an address; an internet protocol (IP) address; a geographical indication; a global positioning system (GPS) identified location; and a reverse 411 identified location." Kolawa teaches that the user is required to provide information including address and phone number (Col. 18, Lines 3-7). Additionally, Ellis '102, paragraph 0140 teaches that the system has access to the user's account information.

Claim 28 is rejected by Kolawa as applied to claim 11.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN STRONCZER whose telephone number is (571)270-3756. The examiner can normally be reached on 7:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Ryan Stronczer/  
Examiner, Art Unit 4157

/Vu Le/  
Supervisory Patent Examiner, Art Unit 4157  
Patent Training Academy